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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
		010555	
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		10/034,776	12/21/01
		First Named Inventor	
		James A. Hutchison IV	
		Art Unit	Examiner
		2684	Angelica Perez
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>60,586</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of _____ forms are submitted.</p>			


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December 21, 2007

Date

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9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

**In Re Application of:
James A. Hutchison**

**) For: Arbitrated Audio Communication
) With Reduced Latency**

Serial No.: 10/034,776

) Group Art Unit: 2684

Filed: December 21, 2001

) Confirmation No. 9013

REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Further to the concurrent filing of the attached Notice of Appeal, and responsive to the Final Office Action issued on June 29, 2007, the following remarks are submitted in connection with the above-identified patent application under the Pre-Appeal Brief Review pilot program.

ARGUMENTS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

Claims 1-39 are pending. The following arguments are directed to the Section 103 rejections of independent claims 1, 12, 20, 26, 33 – 35, and 37 - 39.¹

To establish prima facie obviousness, there must be 1) a suggestion or motivation to combine reference teachings, 2) a reasonable expectation of success, and 3) the references must teach or suggest all of the claim limitations. See MPEP § 2143; *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Clear error exists in the final rejection because each of the independent claims recites features that are plainly not taught or suggested by the cited references, or that are allegedly met by an improper Office Notice. The record also fails to evidence a proper suggestion or motivation for making the proposed combinations of references.

I. Lynk and Stevens Fail to Teach or Suggest All the Features of Claims 1, 20, 33, 37 and 39

Independent claims 1, 20, 33, 37 and 39 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Lynk (EP 321,672) in view of Stevens (GB 2,336,975).

Claim 1 recites “A method comprising: transmitting a request for access to a broadcast link in a point-to-multipoint communication system; transmitting audio with the access request...” Lynk and Stevens fail to teach or suggest the quoted features of claim 1. The Section 103 rejection of claim 1 is improper because it is based upon errors of material fact. Specifically, the Final Office Action states “Stevens teaches of transmitting audio with the access

¹ The Final Office Action rejected claims 33 and 34 under Section 101 and the Advisory Action dated 9/20/07 is unclear as to whether the 101 rejection has been withdrawn. However, in a phone interview on 12/19/07, the Examiner confirmed that the Section 101 rejection has been withdrawn.

request, where the audio includes speech” (Final OA at page 5). This is clear error. Stevens discloses a conventional mobile radio system in which an access request precedes and is separately transmitted from audio (see e.g., Stevens at page 9, line 3 – 5). In addition, the Final OA at paragraph 2 incorrectly asserts that Lynk and Stevens teach transmission (e.g., from a user to storage area in a mobile unit) of an access request combined together with audio. This is also clear error. In no instance do Lynk and Stevens teach or suggest any form of transmitting an access request together with audio. Indeed, Lynk teaches separate handling of audio input and access requests (switch 33 vs. audio input of FIG. 2) within a mobile unit (See Lynk, FIG. 2). Stevens’ disclosure entirely lacks any suggestion or teaching of transmitting an access request combined with audio. Thus, claim 1 is patentable over the combination of Lynk and Stevens.

Claims 20 and 33 recite features similar to those of claim 1, and thus, are patentable over the combination of Lynk and Stevens for the reasons discussed above in connection with claim 1. In addition, claim 20 recites: “A wireless communication device comprising: a wireless transmitter; and a processor that controls the transmitter to transmit a request for access to a broadcast link in a point-to-multipoint communication system, transmit audio with the access request” Claim 33 recites features similar to those quoted for claim 20. In no instance do Lynk and Stevens teach or suggest a wireless communications device having a wireless transmitter and processor configured to transmit an access request and audio together. Thus, claims 20 and 33 are also patentable over the combination of Lynk and Stevens.

Claims 37 recites: “transmitting the audio from the wireless communication device to the network equipment before the access request [from the network equipment] is granted and before the access request is denied....” Lynk and Stevens fail to teach or suggest the quoted features of claim 37. The Final OA at pages 5 - 6 asserts that Stevens teaches “transmitting audio with the access request...from the wireless communication device before receiving an acknowledgement that the access request is granted or denied.” This is clear error. Contrary to what was asserted in the Final OA, Stevens teaches a wireless device (e.g., a mobile station) that transmits audio to network equipment (e.g., a base station) only after a channel to the network is granted (Stevens at page 6, lines 13 – 33). Under no circumstances does Stevens’ system transmit audio on a channel without first being granted access thereto. Thus, Stevens does not teach or suggest the above-quoted features of claim 37.

Claims 39 recites features similar to those for claim 37, and thus, it is likewise patentable over the combination of Lynk and Stevens for the reasons discussed above for claim 37.

II. Lynk, Stevens & Velius Fail to Teach /Suggest All Features of Claims 12, 26, 34, 35 & 38

Independent claims 12, 26, 34, 35 and 38 stand under 35 U.S.C. 103(a) as allegedly being unpatentable over Lynk in view of Stevens and further in view of Velius (US 5,594,784).

Claim 12 recites: “receiving audio *before transmission of an indication that the access request is granted and before transmission of an indication that the access request is denied*” (Emphasis added). In no instance do Lynk, Stevens and Velius teach or suggest the quoted features of claim 12. Furthermore, the Final OA, as well as all prior Office communications of record, do not specifically address that above-quoted features of claim 12 and fail to explain where they are taught or suggest in the prior art. Instead, the Final OA lumps the rejection of claim 12 with the rejection of sixteen other claims at paragraph 8. Paragraph 8 addresses only the acts of “transmitting” and “sending” audio before receiving an access acknowledgement, but never addresses “receiving” audio before grant or denial of an access request, as required by claim 12. The act of transmitting does not necessarily imply receiving audio as recited in claim 12, and furthermore, as discussed above in connection with claims 37 and 39, Stevens plainly does not teach or suggest transmitting audio on a channel before receiving an access acknowledgement. Thus, the rejection of claim 12 is improper because the record is insufficient to establish prima facie obviousness.

Claims 26 and 34 recite features similar to those of claim 12, and thus, are patentable over the combination of Lynk, Stevens and Velius for the reasons discussed above.

Claim 35 recites: “transmitting the audio from the wireless communication device before receiving an acknowledgement that the access request is granted and before receiving an acknowledgement that the access request is denied” Lynk, Stevens and Velius fail to teach or suggest the quoted features of claim 35. The Final OA at pages 10 - 11 asserts that Stevens teaches “transmitting audio with the access request . . . from the wireless communication device before receiving an acknowledgement that the access request is granted or denied.” This is clear error. Contrary to the Examiner’s assertion, Stevens teaches that a wireless device (e.g., a mobile station) transmits audio to network equipment (e.g., a base station) only after a channel to

the network is granted (Stevens at page 6, lines 13 – 33). Stevens' system does *not* transmit audio on a channel without first being granted access thereto.

In addition, the Final OA at page 12 also states “Velius teaches transmitting audio before receiving an acknowledgement that the access request is granted and before receiving an acknowledgement that the access request is denied.” This is clear factual error. In sharp contrast to the claims, Velius discloses a voice-command call-handling system. Velius makes absolutely no mention of a point-to-multipoint communication system, nor the act of requesting access to a broadcast link in a point-to-multipoint communication system. Velius provides no teaching or suggestion of transmitting audio before receiving an acknowledgement that a request for access to a broadcast link is granted or denied. Velius does not even teach or suggest the grant or denial of a request for access to a point-to-multipoint network. Rather, Velius describes voice-command initiation of calls. In the passages cited in the Final OA, Velius describes initiating a call with a voice utterance, and determining whether callers are authorized to make a call. At column 7, lines 10-16, for example, Velius states that a caller utters a call recipient's name or a series of digits to initiate a call. At column 8, lines 5-10, Velius describes a caller authorization process in which caller voices may be analyzed (by “voice-print” matching) to determine whether a user is authorized to use the telephony system for communication, not to control access to a broadcast link. Thus, it bears no relation to the above-quoted features of claim 35.

Claims 38 recites features similar to those for claim 35, and thus, it is likewise patentable over the combination of Lynk, Stevens and Velius for the reasons discussed above for claim 35.

III. The Record Fails to Establish a Proper Suggestion or Motivation for the Proposed Combinations of References

The Record has failed to show a proper suggestion, motivation or reason for making the combination of Lynk and Stevens. For a combination of references to be proper, there must be teaching, suggestion, or motivation to make the proposed combination found either explicitly or implicitly in the prior art or in the knowledge generally available to one of ordinary skill in the art. See MPEP 2143.01. The Final OA at pages 6 and 11 states that one of ordinary skill would combine Lynk and Stevens “in order to allow a larger number of units to be served, as taught by Steven (sic)”. This is clear factual error. Nowhere does Stevens teach, suggest or even mention the desirability of serving a larger number of units, either implicitly or explicitly. The above-quoted motivation is also entirely absent from the teachings and suggestions of Lynk and the

record is entirely devoid of any other factual support for the putative reason to combine Lynk and Stevens. Thus, the rejections under Section 103 are improper.

IV. The Official Notice is Improper and Unsupported by the Record

Independent claim 1 recites: “terminating the audio transmission in the event the access request is denied.” The Examiner acknowledges that Lynk and Stevens do not teach the quoted feature, but “takes ‘Official Notice’ of Lynk’s and particularly Steven’s (sic) admission where is (sic) well known in the art of terminating the audio transmission in the event the access request is denied.” (Final OA at pages 6 and 11). The Official Notice is made in error. First, there is no evidentiary support in the record for the Official Notice. Lynk and Stevens do not teach or suggest anything remotely related to “terminating the audio transmission in the event the access request is denied.” Indeed, there is nothing in the cited passages of Stevens (pages 3 and 4, lines 36 – 37 and 1 – 3, respectively) that teaches or suggests terminating an audio transmission when an access request is denied. In sharp contrast, the cited passages of Stevens merely teach storing connection requests or refusing to connect a call if a target mobile unit is not available. In either situation, there is no termination of an existing audio transmission. Moreover, in the context of the claims, the prior art cited plainly does not teach transmitting audio on a link prior to being granted access to the link. Thus, the Official Notice is improper and can not be relied upon to meet the above-quoted feature of claim 1. For these additional reasons, claim 1 is also patentable over the combination Lynk and Stevens.

Independent claims 20, 26, 33 – 35 and 37 - 39 recite features similar to those of claim 1. Thus, are likewise patentable over the proposed combinations of references for the above reasons. For at least the foregoing reasons, prima facie obviousness has not been established for independent claims 1, 12, 20, 26, 33 – 35, and 37 – 39. Thus, these claims are patentable over the cited references. Since claims 2 - 11, 13 – 19, 21 – 25, 27 - 32 and 36 respectively depend from these independent claims, they are likewise patentable over the cited references.

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